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Victims of CIA Mail Surveillance Sue

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By Aric Press

Brooklyn—The first civil damages trial stemming from 20 years of Central Intelligence Agency surveillance of Americans' mail to Moscow opened yesterday with one of the plaintiffs' lawyers telling a special jury that he was asking them to send a message to U.S. intelligence agents.

"Let every CIA agent and every FBI agent know that when they violate your rights, that is a valued right that a court will give substantial money damages for," Burt Neuborne, an attorney with the American Civil Liberties Union, told the specially impaneled "advisory" jury. He said a substantial damage award would act as "a deterrent."

Neuborne, a law professor at New York University, is representing Minneapolis advertising executive Leonard Avery and Mary Rule MacMillen of Massachusetts, who are each seeking \$20,000 in damages. In 1968, CIA agents opened a letter Avery's son Michael mailed home from Moscow, where he was a student. In 1973, agents opened a personal letter Ms. MacMil-

len sent to a Russian friend who has been described only as "a well-known Soviet." The third plaintiff, Amherst sociology professor Norman Birnbaum, is asking \$50,000 in damages for the opening of a letter he mailed in 1970 to a Russian professor, D.M. Ugrinovich. All of the letters were copied and circulated to various CIA departments.

Under the Federal Torts Claim Act, on which the three plaintiffs are basing their claims, jury trials are prohibited. However, U.S. District Judge Jack Weinstein of Great Neck said he wanted the advice of a jury, whose decision would be non-binding, to help compute what damages, if any, would be assessed.

The three plaintiffs are seeking damages from the U.S. government—not the individual agents—on a variety of grounds, including invasion of privacy and illegal search and seizure. The letters were opened as part of a counterintelligence and surveillance project known as HTLINGUAL, which the CIA operated from 1953 to 1973, first in the Manhattan General Post Office and then from LaGuardia and Kennedy Airports.

During the program, according to 1975 testimony before the U.S. Senate Select Intelligence Committee, agents opened more than 200,000 pieces of mail and intercepted more than 2.7 million envelopes.

In remarks before the selection of nine women and three men as jurors, Weinstein said he was taking the step of using an advisory jury because the case involved unique issues. Weinstein said he knew of only two times when federal judges had used such juries.

The chief problem with these claims for the plaintiffs will be proving actual damages. Government lawyers are not making an issue out of the legality of the mail openings—and have stated that it is clear they would be illegal if resumed today. However, they are vigorously contesting the damages claim. "I am not here to demean constitutional rights," John Boese, a Justice Department lawyer, told the advisory panel. "But I and you as citizens have to defend the federal treasury." Boese contended that the mail openings did not cause any actual damages to any of the plaintiffs. Testimony is scheduled to begin tomorrow.